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OFFICE OF PETITIONS

In re Application of :
Martin B. Wolk et al. :
Application No. 10/646,093 :
Filed: August 22, 2003 :
Attorney Docket No. 58626US002 :
:

ON PETITION

This is a decision on the petition filed May 16, 2006, to withdraw the holding of abandonment in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513, and is treated under 37 CFR 1.181(b). In the alternative, the petition is filed under 37 CFR 1.137(a).

The petition under 37 CFR 1.181(b) is **GRANTED**.

The petition under 37 CFR 1.137(a) is **DISMISSED** as involving moot issues.

This application became abandoned for failure to file a proper response to an Ex Parte Quayle Office Action mailed September 13, 2005. The office communication set a two month period for response. No response having been timely filed, this application became abandoned November 15, 2005. Accordingly, a Notice of Abandonment was mailed April 19, 2006. his application therefore became abandoned on July 25, 2005. Accordingly, a Notice of Abandonment was mailed October 13, 2005.

The file record discloses that the Office Action was mailed to the address of record. However, petitioner contends that it was not received. In support, petitioner indicates that a search of the file jacket and the docket records revealed that the office action was not received and submits copies of pages from the docketing system, wherein receipt of the office action would have been entered, had it been received, to substantiate the claim. Additionally, petitioners have provided a statement from the Docket Administrator who outlines the docketing procedures to show that the office action was not received. The statement and attachments corroborate non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received. Accordingly, the holding of abandonment is withdrawn. As well, there is no need to treat the petition under 37 CFR 1.137(a). No petition fee is due and none will be charged.

This matter is being referred to Technology Center 2879 for appropriate action on the amendment filed May 16, 2006 with the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions